IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.547 of 1999

Namdeo Laxman Bhakre
age 22 years, r/o Ambabai Patangam,
Pandharpur, District Solapur .... Appellant
(Orig.Accused no.1)

V/s

The State of Maharashtra ...Respondent

Shri Raghul S. Kate for Appellant
Smt.V.R.Bhosale,APP for Respondent-State

CORAM:S.B.MHASE &
S.R.SATHE,JJ.
DATED:9th Sept. 2005

ORAL JUDGMENT :- (Per S.R.Sathe,J.)

1. Appellant the original accused in Sessions Case NO.8 of 1996 has preferred this Appeal against the judgment and order passed by the Court of 2nd Additional Sessions Judge, Pandharpur whereby the accused was convicted for the offence punishable under Section 302 of IPC and sentenced to suffer imprisonment for life and to pay fine of Rs.3,000/- and in

default to undergo r/i for six months. He was also held guilty for having committed an offence punishable under Section 498A of IPC but no separate sentence was awarded.

2. Brief facts giving rise to this appeal are as under:-

. The marriage of accused Namdeo Laxman Bhakare took place with Rani, daughter of Ratan Ganpat Kakde (PW 1) some time in April or May 1994. According to father of Rani he had met all expenses of the marriage. After marriage Rani started residing with accused at Pandharpur. The parents of the accused, who were accused nos.2 and 3 in the above mentioned Sessions Case, were also residing with the accused. It is the prosecution case that the accused and his parents were not treating Rani properly. The present accused often used to say that he would perform second marriage. He was also insisting that Rani should bring amount of Rs.10,000/- from her father as accused wanted to purchase tanga. On that count accused used to harass Rani. When Rani informed this to her father, he along with one Audambar Ghadge went to the house of accused and told the accused that he should not harass Rani and as and when possible he will even give some amount. The accused also promised that he will not harass Rani. Few days after marriage accused and Rani started residing separately at Ghatate Plot and parents of accused continued to reside in the earlier premises.

3. On 13-9-1995 at about 8-00 p.m. when PW 1 Ratan Ganpat Kakde was at his residence the son of the landlord of the house of accused went to him and informed him that when accused and Rani were in the house they noticed that smoke was coming out of the house. The father of deceased Rani therefore immediately rushed to the house of the accused. It has come on record that house of the father of Rani is situated at a distance of about 1 or 1-1/2 furlong from the house of accused. He found that Rani had sustained serious burn injuries. He therefore immediately took her to Dispensary of Pandharpur Municipal Council. On way when he made enquiry with Rani as to how she sustained burn injuries, she told him that her husband poured kerosene on her person by taking the same in a steel jar and set her on fire. When PW 1 Ratan Kakde reached the dispensary with Rani, after some time Police reached there. After making enquiry with doctor on duty and finding that Rani was in a position to give statement, the PSI recorded the statement of Rani wherein also she told that she was being harassed by the accused and at the time of incident he asked him as to how she demanded money from Ankush and there was quarrel and the accused poured kerosene on her person and set her on fire. The PSI also sent requisition to the Special Executive Magistrate Pardeshi for recording Dying Declaration of Rani. Accordingly, Dattasing Pardesi, Special Executive Magistrate also went to Municipal Dispensary and recorded the Dying Declaration of Rani wherein also she told that as she asked about money advanced

to Ankush there was quarrel and the accused poured kerosene of her person and set her on fire.

4. On the basis of the statement recorded by PSI, initially he registered the offence punishable under Sections 307 and 498A of IPC. Rani, however, succumbed to burn injuries on the early morning on 19-9-1995. Police, therefore, drew Inquest Panchanama Exh.15 and also sent the dead body for post mortem. The doctor opined that death was caused due to shock and due to 100% burns. PSI therefore registered the offence also under Section 304B of IPC.

5. After completion of the investigation Police submitted charge sheet against the present accused and his parents i.e. accused nos.2 and 3 for the offences punishable under Section 498A and 304-B of IPC.

6. Finding that accused were charge sheeted for the offence exclusively triable by the Sessions Judge, the learned J.M.F.C. committed the case to the Court of Additional Sessions Judge, Pandharpur.

7. The learned Additional Sessions Judge initially framed charge against accused for the offences punishable under Section 498A and 304B read with 34 of IPC. However, subsequently in view of the allegations and the application submitted by the prosecution, additional charge under Section 302 read with 34 of IPC was also framed against the

accused.

8. The charge was red over and explained to the accused. Accused pleaded not guilty and claimed to be tried. Their defence was of total denial.

9. In order to prove the charge levelled against the accused the prosecution examined only four witnesses consisting of father of deceased viz. Ratan Ganpat Kakde - Exh.11, Special Executive Magistrate who recorded the Dying Declaration, Dattasing Pardesi -Exh.12, Dr. Anil Joshi who was on duty at the dispensary of Pandharpur Municipal Council Exh.20 and PSI Dattatray Rajbhoj Exh.26. The prosecution also produced two Dying Declarations, recorded by PSI as well as Special Executive Magistrate respectively, Inquest Panchanama Exh.15, Panchanama of place of offence Exh.16 and Post Mortem notes Exh.17. After considering the evidence adduced by the prosecution the learned trial Judge came to the conclusion that the prosecution has proved beyond reasonable doubt that accused Namdeo i.e. present accused caused cruelty to deceased Rani and also committed her murder. The learned trial Judge found that there was no sufficient evidence against the parents of the accused. He, therefore, acquitted them and convicted the present accused for the offences punishable under Section 498A and 302 of IPC and passed the sentence mentioned above.

10. Being aggrieved by the same the accused filed the

present appeal. In this appeal before us Shri Kate, learned Advocate for the accused urged only 3 points. Firstly, he submitted that learned trial Judge did not put any question with regard to Dying Declaration recorded by the PSI in the statement of accused recorded under Section 313 of Cr.P.C. and thus the accused did not get the opportunity to explain the incriminating circumstances against him and as such the order of conviction and sentence is not legal. Secondly, he canvassed before us that learned trial Judge has not properly appreciated the evidence on record. Lastly, he submitted that even if the evidence on record is accepted still then it cannot be said that accused has committed an offence punishable under Section 302 of IPC because even from the statement of deceased it appears that there was some quarrel between deceased and accused at the relevant time and as such there was grave and sudden provocation. So according to him at the most the offence falls under Section 304 Part II of IPC. As against this, the learned APP supported the judgment and order passed by the learned trial Judge.

11. Finding that the learned trial Judge has not specifically asked any question about the Dying Declaration Exh.27 to the accused in his statement under Section 313 and as such there was some infirmity, we thought it fit to ask the necessary question about Exh.27 and rectify the lapse which was on the part of the trial Court. This course was followed obviously in view of the observations made by the

Apex Court in **AIR 2001 SC 3955 - State of Punjab Vs Naib Div.** wherein the Apex Court has observed that "if any appellate court or revisional court comes across that the trial court had not put any question to an accused even if it is of a vital nature, such omission alone should not result in setting aside the conviction and sentence as an inevitable consequence. Similar view was also taken by the Apex Court in ruling reported at **(2000) 8 SCC 740**. We therefore, called the accused and after putting the necessary questions to him about Exh.27 opportunity was given to him to explain the said evidence. He, however, did not give any satisfactory answer to the said question.

12. It is not in dispute that marriage between accused and Rani had taken place about one and half years prior to the said incident and after marriage she had started residing with accused. PW 1 Ratan Kakde, father of deceased Rani has specifically stated that after marriage the accused was not treating her well and Rani had made a grievance about the same to him. He has also stated that Rani had told him that accused used to assault her and used to say that he would perform second marriage and that he used to insist Rani to bring amount of Rs.10,000/- from her parents. The said witness has also stated that as he received complaint about the ill-treatment meeted to Rani, he along with Audambar Gadge went to the house of the accused to give them understanding and told the accused not to ill-treat Rani. It is pertinent to note that though this witness has been

cross examined at length it is nowhere even suggested to him that he had not gone to the house of accused along with Audambar Ghadge as told by the said witness. So, the evidence with regard to ill-treatment meeted to Rani at the hands of accused is in fact not shaken or shattered. There is no reason to disbelieve the said statement of PW 1 Ratan Kakde.

13. If we peruse the Dying Declaration Exh.27 then also we find that there is a reference regarding the ill-treatment meeted to Rani at the hands of present accused. We will presently point out that the said Dying Declaration appears to be true and correct and trustworthy. So, under such circumstances the statement given by deceased Rani regarding the ill-treatment meeted to her has to be accepted. So, the testimony of PW 1 Ratan Kakde is also corroborated by the Dying Declaration Exh.27. So, we have no hesitation to hold that learned trial Judge has rightly held that the accused was guilty of offence punishable under Section 498A of IPC.

14. From the suggestion put to PWs and from the evidence of the prosecution witnesses it is quite evident that Rani sustained burn injuries when she was in the house of the accused. Dr.Joshi who has examined Rani at the Dispensary of Pandharpur Municipal Council has also stated that she had sustained 96% burns. Post mortem notes Exh.17 also clearly goes to show that her death was due to shock due to 100% burns. Thus, it is very clear that death of Rani was caused

as a result of burn injuries.

15. The main and material question is whether the said death was accidental, suicidal or homicidal. Though one suggestion is put to the prosecution witness that Rani committed suicide, there is absolutely no material on record as a result of which one can even think that Rani was likely to commit suicide. A vague suggestion has been put to the prosecution witness that on the day of incident there was some quarrel between Rani and her mother. The mother was insisting that Rani should accompany her when she will go to the Bazar for selling articles. But Rani refused and on that count there was quarrel. By no stretch of imagination one can say that this would give rise for Rani to commit suicide. It is nobody's case that Rani sustained burn injuries due to accident. So, one thing is certain that death of Rani is neither accidental nor suicidal.

16. The prosecution witness Ratan Kakde has stated that son of the landlord of accused no.1 came to him at about 8 O'Clock at night and informed him that accused and Rani were in the house and smoke was coming out of the house. This statement of witness Ratan Kakde is not at all challenged in the cross examination. It is nowhere even suggested to him that no such son of the landlord had been to him to give information about alleged incident. So, under such circumstances merely because the said boy has not been examined one cannot jump to the conclusion that the

statement given by Ratan G. Kakde is not trustworthy. Thus, we find that when the incident took place, only the deceased Rani and accused were in the house. The time was at about 8-00 p.m. So, this circumstance also indicates that in all probabilities the accused must have committed the overt act of putting Rani on fire. It is nobody's case that at the relevant time the accused sustained any burn injury.

17. Apart from the above mentioned evidence and circumstantial evidence the prosecution is mainly relying on the Dying declarations made by deceased Rani. In this case there are in all 3 Dying declarations. One oral, two written. the first Dying declaration is oral dying declaration made by Rani to her father. Rani's father has categorically stated that when he made query with Rani she told him that accused poured kerosene on her person by taking it in the steel jar. Firstly, it must be noted that this statement of prosecution witness Ratan Kakde has gone totally unchallenged. It is nowhere even suggested to the said witness that Rani did not tell him accordingly. So, there is no reason to disbelieve this statement of witness Ratan Kakde particularly when we find that same is corroborated by other two written dying declarations. It is tried to be argued that story of accused pouring kerosene in jar and then pouring it on person of Rani is improbable. If really it had happened accordingly, then there was sufficient time for Rani to run away from the said place or

to prevent the accused from pouring it. However, it must be noted that at the relevant time only accused and Rani were in the house and merely because the accused first took kerosene in a jar and then threw it on the person of Rani, one cannot jump to the conclusion that there was sufficient time for Rani to prevent the said act of accused. So, there is no substance in the argument advanced by the learned Advocate for the accused in this behalf. Incidently it must be noted that version with regard to first putting kerosene in jar is also supported by Panchnama of the place of offence Exh.16. In this panchanama also there is a reference regarding a pot lying with kerosene smell at the place of offence. So, the evidence of PW 1 Ratan Kakde has to be accepted.

18. PSI Dattatraya Rajbhoj Exh.26 has stated that when he reached to the hospital on receiving message from the hospital he went to the injured Rani and he found that she was in a position to give statement. Not only that but Doctor on duty i.e. Dr.Doshi PW 3 Exh.20 also told him that patient is in a position to give statement and he therefore recorded the Dying Declaration Exh.27 as per the Say of Rani and obtained her thumb impression on the same, so also endorsement of the doctor. It must be noted that it is nowhere suggested to the said witness that he had not gone to the hospital at the relevant time. All that is suggested is that at the relevant time Rani was not in a position to make statement and endorsement given by doctor is false.

However, it must be noted that even Dr.Doshi Exh.20 has stated that at the relevant time PSI made enquiry with him and he found that patient was in a condition to give statement and as such he made the necessary endorsement at Exh.27.There is absolutely no reason why this independent witness Dr.Doshi would depose against the accused. It is nowhere even suggested to witness Dattatray Rajbhoj that thumb impression appearing at Exh.27 is not of deceased Rani. In this Dying Declaration Exh.27 the deceased Rani has specifically stated that at the relevant time there was quarrel with accused as she asked him about the money advanced to Anuksh and then accused poured kerosene on her and set her on fire. When she raised shouts neighbours came and tried to extinguish the fire. Thus we find that evidence of PSI Dattatray Rajbhoj regarding this Dying Declaration is not shaken or shattered in cross examination. On the contrary the same is also supported by Dr.Doshi who has stated that at the relevant time Rani was fully conscious and her statement was recorded in his presence. Merely because the said Dying Declaration appears to be long or lengthy one cannot jump to the conclusion that same is not recorded properly particularly when no other circumstances have been brought on record to raise any suspicion about the said Dying declaration.

19. The prosecution witness Dattasing Pardesi , Special Executive Magistrate has stated that on 13-9-1995 at night he received the requisition Exh.13 for recording Dying

Declaration and accordingly he went to the dispensary of Pandharpur Municipal Council and then he recorded the dying declaration in between 9-45 p.m. to 10-10 p.m. It is nowhere suggested to the said witness that such requisition was not received by him and that he had not gone there. The said witness has specifically stated that dying declaration Exh.14 is in his own hand writing and he has obtained thumb impression of Rani on the same. It is not suggested that said thumb mark is not of Rani. The Dying declaration Exh.14 is very short and is recorded in the question and answer form. If we peruse the dying declaration it also shows that same must be true and in the words of the deceased. In this dying declaration at Exh.14 which is recorded by the Special Executive Magistrate deceased Rani has categorically said that at the relevant time quarrel took place on account of money advanced to Ankush and then her husband poured kerosene on her person and set her on fire. It is pertinent to note that there is absolutely nothing in the cross examination of witness Special Executive Magistrate which would show that statement given by him is not trustworthy. On the contrary it must be noted that said witness has even plainly admitted that endorsement appearing on the said Dying declaration is not obtained by him. This itself shows that the said witness was not at all under influence of Police and is trustworthy witness. So, when he said that such particular statement was given by Rani to him there is absolutely no reason to disbelieve his evidence.

20. Thus we find that in the instant case there are 3 Dying declarations. All these 3 dying declarations are consistent. There is nothing on record which would show that all these dying declarations are not true. All 3 dying declarations appeared to us quite trustworthy and we accept the same. So, once the dying declaration is believed and accepted then conclusion can be based on it even when there is no other corroboration. There is cantna of rulings in which it has been said that if dying declaration is believed it can be relied upon for convicting the accused even if there is no other corroboration. It has been so held in the cases reported at :

i) AIR 1958 SC 22,
ii) AIR 1962 SC 130
iii) 1976 SC 2199

21. The learned Advocate for the accused tried to argue before us that in the instant case there was quarrel between husband and wife prior to the incident hence accused cannot be convicted for the offence punishable under Section 302 of IPC and at the most he can be convicted for the offence punishable under Section 304 Part II. For this purpose he has placed reliance on a case **Muthu Kutty and Anr V/s State by Inspector of Police,T.N. (2005) 9 SCC 113**. We have carefully gone through the said authority. In that case the death was due to burn injuries and it was alleged that

accused set fire to the deceased. However in that case the trial Court convicted the accused for the offence under Section 304 Part II of IPC. However, the said view was not approved by the Apex Court but as the State had not preferred any appeal against the decision of holding accused guilty for offence under Section 304 Part II and not under Section 302, the Apex Court did not intervene. So, the above stated case is of no use to the accused. The second case which was relied upon by the Advocate for the accused is reported at **2004 All MR (CRI) 887**. The facts of that case and the facts of the case in hand are also different. In that case it was held that though death was due to burn injuries there was evidence to show that if proper medical care and attention would have been received the injured person would have saved but as proper medical care was not received she succumbed to burn injuries. So, under such peculiar circumstances it was held that accused is guilty of offence punishable under Section 304 Part II. Though the learned Advocate for the accused tried to argue before us that in the instant case there was grave and sudden provocation, it is needless to say that deceased had only asked the accused as to why he advanced money to Ankush. So, that by itself cannot be considered to be an act of giving provocation. So, we have no hesitation to hold that there is no substance in the argument advanced by the learned Advocate for the accused in this behalf.

23. In view of above discussion, we hold that learned trial

Judge has rightly appreciated the evidence on record and has correctly held that prosecution has proved beyond reasonable doubt that accused committed murder of his wife. We find no reason to interfere with the said finding. Hence the order of conviction and sentence passed by the trial Court is confirmed. The appeal is dismissed.

(S.R.SATHE,J) (S.B.MHASE,J)